

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

CARL D. MCCUE of Hampden, Maine

Plaintiff

V.

Civil Action No.

SECRETARY OF HEALTH AND HUMAN SERVICES

DOCKET NO.: M-16-488

COMPLAINT

ALJ APPEAL NO.: 1-3654008648

(APPEAL FROM

ADVERSE DECISION OF

DHHS MEDICARE

Defendant

APPEALS COUNCIL)

Plaintiff Carl D. McCue, by and through its undersigned attorneys, David J. Van Dyke Esq., Lynch & Van Dyke P.A., Lewiston, Maine, hereby Appeals from the above-referenced adverse decision of the Medicare Appeals Council, and in support thereof, states as follows.

JURISDICTION AND VENUE

1. This action is an appeal of an adverse decision of the Medicare Appeals Council.
2. This Court has jurisdiction over this action pursuant to Section 1852 (g)(5) of the Social Security Act, 42 U.S.C. Section 1395w-22 (g)(5).
3. Venue is properly vested in this Court because Plaintiff is a resident of this District.

PARTIES

4. Plaintiff Carl McCue is an individual and a resident of Hampden, County of Penobscot and State of Maine.
5. Defendant is the Secretary of the Department of Health and Human Services (hereinafter, "the Department").

UNDERLYING FACTS

6. On December 20, 2017, the Department rendered its Decision in *Re: C.M.* (a claim for benefits under Medicare Advantage (Part C)), Docket No. M-16-488, ALJ Appeal No. 1-3654008648.
7. The within Decision was in error, both factually and as a matter of law.
8. Based upon the record at issue, the subject MRI-guided laser prostate ablation procedure is both safe and effective.
9. Based upon the record at issue, the subject MRI-guided laser prostate ablation procedure is both medically reasonable and necessary, as defined in the Plan.
10. Based upon the record at issue, the subject MRI-guided laser prostate ablation procedure is urgent and emergency care necessary to be provided out-of-network and/or Plaintiff McCue fits within the Plan exception for out-of-network coverage based upon medical care that Medicare requires the Plan to cover that the providers within the Plan's network cannot provide.
11. Based upon the record at issue, the subject MRI-guided laser prostate ablation procedure is neither experimental nor investigational.
12. The ALJ and Appeals Council failed to appropriately consider and/or afforded

insufficient weight to the medical opinions submitted in support of the said procedure.

13. The ALJ and Appeals Council failed to recognize that no evidence or no sufficient evidence was submitted or is extant in the record which contradicted the aforesaid medical opinions.

WHEREFORE, Plaintiff Carl McCue demands judgment against the Defendant Secretary and that the Plan be required to cover all costs associated with the subject laser-guided ablation procedure provided to Plaintiff on January 8, 2015, together with such other, further and additional relief as this Court deems just and appropriate.

Dated at Lewiston, Maine this 10th day of January, 2018.

/s/David Van Dyke, Esq.
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